LEE BROTHERS PLANTATION & REALTY (M) SDN. BHD.

v.

LEE YEOW TENG

HIGH COURT MALAYA, SEREMBAN
MUSTAPHA HUSSAIN J
[ORIGINATING SUMMONS NO. 25-51 OF 1990]
23 AUGUST 1990

TRUSTS: *Company property converted into shares - Sale of lands under trust - Consent of beneficiary - Caveatable interest.*

The directors and subscribers of the plaintiff company had purchased by shares, 61 pieces of land, by forming a company with their properties converted into shares. Some of the lands which were purchased or converted were held by the owners as trustee for their children.

The defendant D is a beneficiary under one of the trusts and is the son of F the patriarch of the family who had all along had actual care and management of the company; as a result of familial disputes, D's father resigned in February 1989 as executive director, after 15 years. D fearing that certain lands were to be sold to a third party and would defeat his interests, lodged caveats on these lands. L applied for removal of these caveats. The issue to be determined is whether the trustees had the power to sell the said lands which were trust property.

Held:
[1] As a beneficiary of the trust, D has the right to the lands under the trust for his benefit. The trustee did not obtain a Court order to sell the trust properties nor was there consent by D.

[2] D therefore has a caveatable interest and can maintain the caveat even though he had acquired and received the benefit.

[Plaintiffs application dismissed.]

For the plaintiff - Francis Lim Chiew Kwee; M/s. Francis Lim & Co.
For the defendant - C.S. Chan; M/s. Shearn, Delamore & Co.

JUDGMENT

Mustapha Hussain J:

This is an application by the plaintiff company to remove the private caveat lodged by the defendant.

The plaintiff company is a family of brothers surnamed Lee. It was formed some time in 1974. The directors and subscribers had purchased by shares some 61 pieces of land belonging to them as owners. In other words forming a company with their properties converted into shares. Of course agreements were made between themselves, some wearing one hat on one hand as directors of the company and

some wearing another hat as owners of the land. Some of the lands which were purchased or converted, the owners had held as trustees for their children. Very smart arrangements on their part because the trustees can always come forward in the event of something adverse happening to the properties.

The defendant is the son of the eldest of the Lee Brothers, the real patriarch of the family since the death of the father, a sort of "tua-koh". His father became the executive director of the company, and it was him who was running the whole show, as his domain.

As the other brothers grew up and got smart, squabbles started to happen. Defendant's father then resigned in February 1989, as executive director, after holding the helm since the inception of the company in 1974.

After the resignation of the defendant's father as executive director, the defendant lodged the caveat on four pieces of land in May 1989.

Defendant's claim is that he fears that there is a proposal that the lands may be sold to a third party and he would not receive the benefit of the sale. His second fear is that the trustee directors may choose to act in a manner detrimental to his interests.

Now, it is clear this fear only came up after eleven years of happiness and prosperity and only after his father had resigned as the Executive Director who was running the whole show.

The defendant has forgotten to bring to the attention of the Court that way back in 1978 by Resolution dated 24 September 1974 land owner (his father) had been fully paid, the defendant's father being paid twice as much than the other brothers and that the shares allotted to the defendant's father had been transferred to all his children including the defendant.

On or about 26 August 1978 the defendant together with his brothers and sisters re-transferred their shares to their family company i.e. Lee Geok Thye (Holdings) Sdn. Bhd.

The defendant had received all the benefits of the trust that his father had held and had given him. He should sue his father if at all his fears do materialise and he would suffer from the collapse of the company which may soon happen if his father and his brothers continue to quarrel.

The defendant's fears are not a serious question to be tried in a Court of law but should be tried in a family gathering. It does not amount to a caveatable interest.

However a question of law is involved in this case. That the four pieces of land involved are under trust. The trustee did not obtain a Court order to sell the trust properties - nor is there a consent by the beneficiary. It is clearly a breach of the law of trust. The defendant here is the beneficiary of that trust - surely he has the right to the lands under trust for his benefit. He therefore has the caveatable interest and can maintain the caveat even though he had acquired and received the benefit. The application to remove the caveat is therefore disallowed - unless the plaintiff can show the defendant had given his consent.

The plaintiff's application is dismissed with costs and it is hoped that the family of brothers can come together to settle all the differences among themselves.

Also found at [1991] 1 CLJ 133